

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ANTHONY GAMBINO,

-v-

9:20-CV-162

CORRECTION OFFICER
CAREY, Franklin Correctional
Facility, and NEW YORK STATE
DEPARTMENT OF CORRECTIONS
AND COMMUNITY SUPERVISION,

Defendants.

APPEARANCES:

OF COUNSEL:

ANTHONY GAMBINO
Plaintiff, Pro Se
19-A-3031
Franklin Correctional Facility
P.O. Box 10
Malone, NY 12954

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LAUREN ROSE
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Ass't Attorney General

DAVID N. HURD
United States District Judge

ORDER ON REPORT & RECOMMENDATION

Pro se plaintiff Anthony Gambino (“plaintiff”), an inmate in the custody of
the New York State Department of Corrections and Community Supervision

(“DOCCS”), filed this 42 U.S.C. § 1983 action alleging that, *inter alia*, (1) defendant Correction Officer Carey violated his Eighth Amendment rights and (2) defendant DOCCS violated his rights under the ADA and Section 504 of the Rehabilitation Act. Dkt. No. 13.

On September 1, 2020, defendants moved under Federal Rule of Civil Procedure (“Rule”) 56 seeking summary judgment on all of plaintiff’s claims based on his alleged failure to exhaust available administrative remedies. Dkt. No. 21. Plaintiff did not respond to or oppose the motion.

On March 26, 2021, U.S. Magistrate Judge Daniel J. Stewart advised by Report & Recommendation (“R&R”) that defendants’ motion be granted and that plaintiff’s claims be dismissed. Dkt. No. 25. Neither party has filed objections.

Upon review for clear error, the Report & Recommendation is accepted and adopted in all respects. *See* FED. R. CIV. P. 72(b).

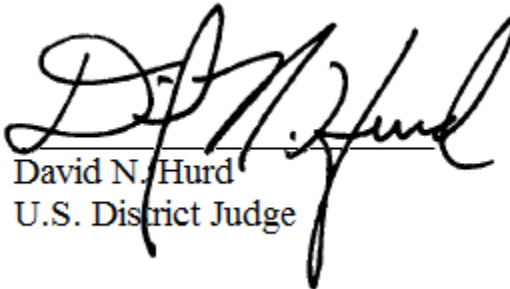
Therefore, it is

ORDERED that

1. The Report & Recommendation is ADOPTED;
2. Defendants’ motion for summary judgment is GRANTED;
3. Plaintiff’s claims against Correction Officer Carey and DOCCS are DISMISSED; and

4. The Clerk of the Court shall serve a copy of this Order on plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.



David N. Hurd
U.S. District Judge

Dated: April 13, 2021
Utica, New York.